

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-094274

04/27/2012

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT

I. Ostrander

Deputy

IN RE THE MARRIAGE OF
BRUCE MCCLELLAND

BRUCE MCCLELLAND

P O BOX 50591

MESA AZ 85208

AND

HEATHER MCCLELLAND

JANET R FEELEY

DOCKET-FAMILY COURT-SE

FAMILY COURT SERVICES-CCC

UNDER ADVISEMENT RULING

DECREE OF DISSOLUTION OF MARRIAGE

This matter having been taken under advisement on February 28, 2012, and having considered the matters presented, the Court now makes the following findings and enters the following orders:

- A. At the time this action was commenced at least one of the parties was domiciled in the state of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.
- B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.
- C. The parties were married on April 1, 1995. By operation of law, the marital community is deemed to have terminated on September 30, 2011.
- D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.

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- E. There is one minor child common to the parties, namely: Casey, born on November 16, 1997.
- F. Mother is not pregnant.
- G. This Court has jurisdiction to determine custody issues pursuant to A.R.S. § 25-1031 as Arizona is the “home state” of the children. In determining custody, the Court has considered the provisions of A.R.S. § 25-403(A).
- H. This was not a covenant marriage.
- I. To the extent that it has jurisdiction to do so, the Court has considered, approved, and made provision for the maintenance of either spouse and the division of property and debts.

Based thereon,

DISSOLUTION OF MARRIAGE

IT IS HEREBY ORDERED dissolving the marriage of the parties and restoring each party to the status of a single person.

CUSTODY

Custody is at issue. The determination of the issue is statutorily controlled. A.R.S. § 25-403(A) sets forth the factors to be considered. Those factors, as well as the Court’s findings thereon, are as follows:

- *The wishes of the child’s parent or parents as to custody.*
Neither parent objects to joint legal custody but both wish to serve as the primary custodial parent.
- *The wishes of the child as to the custodian.*
The child was not interviewed for purposes of this trial.
- *The interaction and interrelationship of the child with the child’s parent or parents, the child’s siblings, and any other person who may significantly affect the child’s best interest.*
The parents indicate they enjoy a good, loving relationship with the minor child.
- *The child’s adjustment to home, school, and community.*
The child’s home life has been disrupted by the agitation caused by Father seeking an Order of Protection against Mother, which he later dismissed.

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- *The mental and physical health of all individuals involved.*
Mental and physical health issues were not raised for purposes of determining custody.
- *Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.*
Although off to a rocky start, the Court anticipates that both parents will comply with Court orders regarding parenting time.
- *Whether one parent, both parents, or neither parent has provided primary care of the child.*
Father indicates he provided the primary care for the minor child. Mother indicates she also provided primary care for the minor child.
- *The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.*
This is not a relevant factor in this case.
- *Whether a parent has complied with chapter 3, article 5 of this title.*
Both parents obtained their Parent Education Certificate.
- *Whether either parent was convicted of an act of false reporting of child abuse or neglect under § 13-2907.02.*
Neither parent was convicted for an act of false reporting of child abuse or neglect.
- *Whether there has been domestic violence or child abuse as defined in § 25-403.03.*
Father obtained an Order of Protection, which he later voluntarily dismissed. The Court does not find that there is evidence of significant domestic violence.

Legal Custody

IT IS THEREFORE ORDERED as follows:

- A. The parties are awarded joint legal custody of the minor child.
- B. Each parent is entitled to full and unrestricted access to all medical, dental, prescription, and health-related records of the child and each may secure information from, and consult with, all healthcare professionals involved with the minor child. Each party shall keep the other parent informed of the names, addresses, and telephone numbers of all healthcare providers of the child.

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- C. Each parent is entitled to full and unrestricted access to all school records, teachers, and school officials involved in the child's schooling.
- D. Both parents shall be listed and identified as contact persons on all records.
- E. In the event of any emergency or urgent circumstance involving the child, the other parent shall be notified as soon as is reasonably possible.
- F. Each parent shall have the right to attend and participate in school, extra-curricular, conference, organized activity, or other similar event in which parents are routinely invited or permitted to attend.
- G. Each parent shall keep the other apprised of his or her home address, home telephone number, employer and address, work telephone number and, if applicable, cellular telephone number and e-mail address.
- H. It is in the furtherance of the child's best interests for the parents to confer and for the views of each parent to be considered. There shall be communication between the parents to address day-to-day and more significant issues. They shall develop their communication by utilizing e-mail as their primary method for communication. This shall afford a method that ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and sent so that if an issue arises in the future that has been addressed through e-mail, each party shall have proof as to what was communicated.
- I. It is anticipated that parental decisions shall be required for major issues in raising the child and in meeting his on-going needs. The parents shall address the issues if/when they arise. Each shall give good faith consideration to the views of the other. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input. If the parents cannot agree after making a good faith effort to come to an agreed-upon decision, Mother shall have "presumptive decision-making authority." This level of authority shall allow Mother the right to make a preliminary decision that she shall then communicate to Father. If Father believes that her decision is contrary to the best interests of the child, he shall have the right to seek review thereof through the Court. Father shall have the burden to demonstrate that the decision made by Mother is contrary to the child's best interests. It shall not be sufficient for him to demonstrate that an alternative decision may have also been in the interest of the child.

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Physical Custody and Parenting Time

As part of the joint legal custody award, Mother shall be designated as the primary residential parent. Father's parenting time shall be as follows:

1. **Regular Access** – Father shall have every other weekend with the minor child, beginning on Friday after school, and concluding Monday morning by returning the child to school, and mid-week visitation on Wednesday after school. Parenting time shall not preclude the child from participating in activities.
2. **Holidays** – The parties shall utilize the following schedule, which takes priority over the regular or summer access schedule:
 - a. Christmas shall be divided into two segments. The first shall begin on December 24th at noon and continue until December 25th at noon. The second segment shall begin on December 25th at noon and continue until December 26th at noon. In each even-numbered year, Father shall be entitled to the first segment and Mother shall be entitled to the second segment. In each odd-numbered year Mother shall have the first segment and Father shall have the second segment.
 - b. Thanksgiving shall be alternated each year. It shall begin at 6:00 p.m. on Wednesday night and continue until the regular exchange time on Friday. Thereafter, the parent entitled to that weekend under the alternating weekend schedule shall have the remainder of the weekend. In even-numbered years, Mother shall be entitled Thanksgiving and in odd-numbered years, Father shall be entitled to Thanksgiving.
 - c. July 4th shall begin at 9:00 a.m. and continue until 9:00 a.m. on July 5th. The child shall be with Father in odd-numbered years and with Mother in even-numbered years.
 - d. Each year the child shall be with Mother on Mother's Day from 9:00 a.m. until 6:00 p.m. and with Father on Father's Day from 9:00 a.m. until 6:00 p.m.
 - e. The child shall be with Mother for Easter Sunday in even-numbered years from 9:00 a.m. until 6:00 p.m. and with Father for this same time period in odd-numbered years.
 - f. Monday holidays shall be assigned to the parent who is entitled to that weekend under the alternating weekend schedule. Therefore, if it is Father's weekend and there is a Monday holiday attached thereto, the

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return of the child to Mother shall be on Monday evening rather than Sunday evening.

Father shall be responsible for the pick-up of the child at the start of any access time assigned to him and Mother shall be responsible for the pick-up of the child at the end of Father's parenting time.

Each parent is entitled to exercise up to two separate one-week vacations with the child each summer. Notice of the intent to exercise vacation time shall be provided in writing (via email) by no later than sixty (60) days in advance. For travel, a full written itinerary shall be provided to the other parent at least fourteen (14) days before departure. The itinerary shall include mode of transportation, destinations, accommodations, and telephone numbers.

Neither parent shall relocate the residence of the child outside of Arizona without prior written consent of the other parent or Court order.

Each parent is entitled to have reasonable telephone communication with the child. It is the responsibility of the parent with whom the child is physically present to assist in facilitating such telephone communication.

CHILD SUPPORT

For child support purposes, the Court makes the following findings:

Mother's Income	\$3,917.00
Father's Income (Imputed)	3,385.00
Basic Support Obligation	1,000.00
Over 12 Adjustment	100.00
Parenting Time Adjustment (130 days)	25.0%

In applying these findings under the Arizona Child Support Guidelines,

IT IS ORDERED that Father shall pay child support to Mother in the total amount of \$256.93 per month, commencing October 1, 2011. All payments shall be made through the Support Payment Clearinghouse via an automatic *Order of Assignment* issued this date. Father is advised that until such time as the *Order of Assignment* becomes effective, Father has an affirmative obligation to pay the child support directly to the Support Payment Clearinghouse in accordance with the instructions for making payments through the Clearinghouse attached hereto.

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IT IS FURTHER ORDERED Father shall complete and file with the Clerk of the Court the *Current Employer Information* form attached hereto.

All obligations for child support for each child shall terminate when each child attains the age of 18 years or is otherwise emancipated. In the event any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which said child is actually attending high school but only until the child reaches 19 years of age. Provisions for health insurance and non-insured health expenses for the child, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503(I), the right of a parent, guardian, or custodian to receive child support payments as provided herein vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

EXCHANGE OF INCOME INFORMATION

The parties shall exchange income information every 24 months from the date of the entry of the Decree of Dissolution of Marriage for so long as Father has an obligation to pay child support. Said financial information shall include, but not be limited to, personal tax returns with all schedules, affidavits of financial information, earning statements, and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

CHILD'S INSURANCE

IT IS ORDERED that Mother shall maintain medical insurance for the minor child. Mother shall ensure that Father is kept informed at all times of the name and address of the insurance provider, as well as the policy number. Additionally, Mother shall provide Father with valid insurance cards and policy information and update information changes.

IT IS FURTHER ORDERED that any non-covered medical, dental, orthodontic, optical, and prescription expenses, as well as deductibles and co-pays, shall be paid 50 percent by Father and 50 percent by Mother.

DEPENDENCY EXEMPTION

IT IS ORDERED that Mother may claim the minor child in odd-numbered years and Father may claim the minor child in even-numbered years.

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IT IS FURTHER ORDERED that each party shall execute any IRS forms required in order to implement these terms, including IRS Form 8332.

IT IS FURTHER ORDERED that Father's right to claim the exemption in any given year is conditioned upon payment by Father by December 31st of the total Court-ordered monthly child support obligation for that calendar year and any Court-ordered arrearage payments due during the calendar year for which the exemption is to be claimed.

PROPERTY

The parties agree that each party shall retain as his or her sole and separate property any furniture, furnishings, appliances, tools, art work, collectibles, and related personal property in that party's possession.

Mother pre-qualified for the mortgage, as ordered by the Court. Paternal Grandfather is willing to purchase the marital residence, pay off the mortgage, and rent the house to Father. The parties agree that there is a low balance due and owing on the mortgage. The Court finds it appropriate to allow Paternal Grandfather to buy out Mother's community interest in the marital residence.

Each party shall keep the retirement accounts in his or her own name. Mother shall owe Father an additional \$19,000.00 as a set off.

Each party shall retain as his or her sole and separate property any disclosed savings, checking, or other financial account held in that party's name.

Mother is awarded the Toyota Corolla vehicle subject to her being solely responsible for any loans or financial obligations associated therewith. Father is awarded the Toyota Sienna, the Volkswagen Beetle, and the utility trailer subject to him being solely responsible for any loans or financial obligations associated therewith. The parties shall sign the documents necessary to complete the transfer of ownership.

The Court concludes that personal property has been divided and there are no longer any additional issues.

DEBTS

IT IS ORDERED that Father shall be responsible for, indemnify, and hold Mother harmless from the following debts and financial obligations:

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- A. Unless otherwise provided herein, any financial obligations associated with, or arising from, any property awarded to Father herein.
- B. Any debts or financial obligations incurred by Father after the date of service of process.

IT IS FURTHER ORDERED that Mother shall be responsible for, indemnify, and hold Father harmless from the following debts and financial obligations:

- A. Unless otherwise provided herein, any financial obligations associated with, or arising from, any property awarded to Mother herein.
- B. Any debts or financial obligations incurred by Mother after the date of service of process.

SPOUSAL MAINTENANCE

The determination of spousal maintenance is controlled by A.R.S. § 25-319. The threshold question is entitlement, which is controlled by subsection (A) of the statute. It provides as follows:

In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse for any of the following reasons if it finds that the spouse seeking maintenance:

- 1. *Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.*
Neither party is receiving property sufficient to provide for their reasonable needs.
- 2. *Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient*
Husband is able to be self-sufficient through appropriate employment. He has earning ability in the labor market as a teacher, once he reinstates his certification, and additional income as a repairman.
- 3. *Contributed to the educational opportunities of the other spouse.*

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Both spouses incurred student loans while married and paid off their loans with community funds.

4. *Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.*
Although the marriage is one of long duration, Husband is able to gain employment adequate to be self-sufficient.

Based upon these findings, the Court finds no basis to award spousal maintenance.

ATTORNEY FEES

An award of attorney fees is controlled by A.R.S. § 25-324. It provides that the award may be based upon either the financial resources of both parties or the reasonableness of positions taken during the proceedings.

While Father has expanded the scope of litigation with his positions taken, the Court cannot say that it is a basis for awarding attorney fees and costs. Mother earns more than Father but that is more a result of Father not seeking employment. The Court finds it appropriate to have each side bear his or her own attorney fees and costs.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81 (D), Arizona Rules of Family Law Procedure.

DATED this 27th day of April 2012.

/S/ HONORABLE TIMOTHY J. RYAN

HONORABLE TIMOTHY J. RYAN
JUDICIAL OFFICER OF THE SUPERIOR COURT

FILED: Exhibit Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.
Attachments:

BRUCE MCCLELLAND: Non IV-D Payment Instructions, Current Employer Information